

**AMENDMENT IN SUPPORT OF RCE  
Appln. No. 09/834,501**

**PATENT APPLICATION**

**REMARKS**

Reconsideration and further examination of this application is hereby requested. Claims 13-16, 20, and 21 are currently pending in the application. Claims 1-12 and 17-19 have been canceled. Claim 21 is newly added.

No new matter has been entered.

**A. OBVIOUSNESS REJECTIONS**

Claims 12, 13, 16, and 17 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Yamazaki* (US 5302226) alone. Claims 14 and 18 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Yamazaki* in view of *Turner* (US 5509464). Claims 15 and 19 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Yamazaki* in view of *Cheng* (US 5304248). Claim 20 has been rejected under 35 U.S.C. § 103(a) as being obvious over *Yamazaki* in view of admitted prior art (in particular, Fig. 3 of the present application). Claims 12, 15-17, and 19 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Cheng* alone. Claim 20 has been rejected under 35 U.S.C. § 103(a) as being obvious over *Cheng* in view of admitted prior art. Claims 12, 13, 15-17, and 19 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Aruga* (EP 628644 A2) in view of *Hongoh* (US 6358324). Claims 14 and 18 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Aruga* in view of *Hongoh*.

**AMENDMENT IN SUPPORT OF RCE**  
**Appn. No. 09/834,501**

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and further in view of *Turner* and *Yamazaki*. Claim 20 has been rejected under 35 U.S.C. § 103(a) as being obvious over *Aruga* in view of *Hongoh*, and further in view of admitted prior art.

These rejections are moot as to now-canceled claims 12 and 17-19. As concerning claims 13-16, 20, and 21, these rejections are respectfully traversed based on the following arguments.

In order for a patent claim to be obvious, the prior art must teach or suggest all the limitations of that claim. That is because the claim must be considered as a whole.

Independent claim 20 (as amended) recites the limitation of "a pumping port formed in the bottom wall" at lines 5 and 6, the limitation of "plural article supports" at line 8, and the limitation of

a partition extending partially toward the bottom wall from a top wall of the chamber body downward between the plural article supports

at lines 15-17. New independent claim 21 recites these limitations also.

When considered together, the *Yamazaki*, *Cheng*, *Turner*, *Aruga*, and *Hongoh* references and the admitted prior art do not teach or fairly suggest the combination of claimed limitations of multiple article supports, a pump port at the bottom of the chamber, and a partition that partially extends through the chamber between the article supports. Although Fig. 3 of the

**AMENDMENT IN SUPPORT OF RCE  
Appln. No. 09/834,501**

**PATENT APPLICATION**

present application shows a dual chamber system, this does not suggest a chamber that contains plural article supports with a partition extending partially through that chamber between the supports. In fact, none of the prior art of record provides a suggestion of a partition extending partially through that chamber between plural article supports.

This feature of the invention, the partition extending only partially through the chamber rather than all the way across the chamber so as to divide it into two separate chambers, provides a useful advantage over the prior art. The partial partition promotes uniformity between the two halves of the chamber, ensuring that the two articles being processed are subjected to substantially identical pressure conditions. This advantage cannot be obtained based only on the features that are taught in the prior art references.

Although not explicitly relied upon as part of the basis for rejection of the claims, the Examiner has analyzed two additional references: *Luo* (WO 99/26277) and *Kim* (US 6214120). Although *Kim* does portray dual chambers, it does not provide a suggestion of a single chamber with a partition extending partially down through the chamber between plural article supports. Although *Luo* does discuss dual chambers, it does not provide a suggestion of a single chamber with a partition extending partially down

**AMENDMENT IN SUPPORT OF RCE  
Appln. No. 09/834,501**

**PATENT APPLICATION**

through the chamber between plural article supports.

Interestingly, the Examiner continues to cite bad case law as authority for an alleged rule that repetition of parts would have been *per se* obvious. *In re Harza* 124 U.S.P.Q. 738 (C.C.P.A. 1960); *St. Regis Paper Co. v. Beemis Co., Inc.*, 193 U.S.P.Q. 8, 11 (7th Cir. 1977). In the remarks to the Amendment filed February 19, 2003, Applicant provided a reasoned explanation of the legal deficiencies of the *Harza* and *St. Regis* opinions. Rather than making a reasoned reply to Applicant's arguments on this issue, the Examiner has simply repeated the old arguments from the first Office Action. To prevent this issue from being dropped, Applicant reiterates the analysis on this issue from the previous Amendment.

Applicant respectfully submits that the *Harza* and *St. Regis* opinions are based on unsound reasoning for the following reasons. The *Harza* decision predates the landmark decision in *Graham v. Deere*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966), and relies on the now-discredited logic that a "new and unexpected result" is necessary for patentability. That is clearly no longer the law after the *Graham v. Deere* decision. The *St. Regis* decision is not binding precedent as it was decided by the 7th Circuit Court of Appeals. The reasoning that the *St. Regis* decision is based is also flawed because it requires that the invention

**AMENDMENT IN SUPPORT OF RCE  
Appln. No. 09/834,501**

**PATENT APPLICATION**

"create a synergistic combination" in order to patentable. That also is clearly not current law. Although the *St. Regis* opinion cites to *Graham v. Deere* as controlling precedent, it is clear that the *St. Regis* court did not understand *Graham v. Deere*.

Accordingly, Applicant respectfully submits that the prior art does not establish a *prima facie* case of obviousness with respect to claims 13-16, 20, and 21.

**B. CLOSING**

In view of the above, Applicant respectfully submits that independent claims 20 and 21 are patentable over the prior art. Applicant further submits that dependent claims 13-16 are patentable, at least as being dependent from patentable independent claims, and are further patentable due to the additional limitations recited therein.

For the above reasons, Applicant respectfully submits that the application is in condition for allowance with claims 13-16, 20, and 21. If there remain any issues that may be disposed of via a telephonic interview, the Examiner is kindly invited to contact the undersigned at the local exchange given below.

**AMENDMENT IN SUPPORT OF RCE**  
**Appln. No. 09/834,501**

**PATENT APPLICATION**

The Director of the Patent and Trademark Office is authorized to charge any necessary fees, and conversely, deposit any credit balance, to Deposit Account No. 18-1579.

Respectfully submitted,  
ROBERTS ABOKHAIR & MARDULA, LLC

  
Christopher B. Kilner  
Reg. No. 45381

*Please direct phone calls to:*  
Kevin Pontius at (505) 922-1400

*Please continue to direct correspondence to:*  
PATENT COUNSEL  
APPLIED MATERIALS, INC.  
Legal Affairs Department  
P.O. Box 450A  
Santa Clara, CA 95052

NOV 06 2003

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of  
Gerhard SCHNEIDER et al.

Atty. Docket No.:  
5196/ETCH/CONE/JB1

Appln. No.: 09/834,501  
Filed: Apr. 12, 2001  
Conf. No.: 5799

Group Art Unit: 1763  
Examiner: L. Alejandro  
Mulero

Title: MUSHROOM STEM WAFER PEDESTAL  
FOR IMPROVED CONDUCTANCE AND  
UNIFORMITY

PETITION FOR EXTENSION OF TIME  
UNDER 37 C.F.R. § 1.136

Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby petitions for a three (3) month extension of time extending the period for reply to the Office Action mailed May 6, 2003 from August 6, 2003 to November 6, 2003. A check for the statutory fee of \$950.00 is enclosed herewith. The Director of the U.S. Patent and Trademark Office is authorized to charge any necessary fees, and conversely, deposit any credit balance, to Deposit Account No. 18-1579.

Respectfully submitted,  
ROBERTS ABOKHAIR & MARDULA, LLC

  
Christopher B. Kilner  
Reg. No. 45381